

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: QWEST CORPORATION, f/k/a U S WEST COMMUNICATIONS, INC.	DOCKET NO. RPU-00-1 (TF-01-244)
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ORDER REGARDING RETAIL COMPLIANCE TARIFF

(Issued November 16, 2001)

On January 11, 2001, the Utilities Board (Board) issued a "Final Decision And Order" (the Order) in this docket approving a methodology for deaveraging the unbundled network element (UNE) loop price for Qwest Corporation (Qwest). In the same order, the Board authorized Qwest to adjust certain retail business rates, consistent with certain criteria specified in the order. Qwest was directed to file proposed revised tariffs, complying with the requirements of the Board order, within 45 days of the date the final decision and order was issued. (That deadline was subsequently extended, by order issued March 9, 2001.)

The Board's order provided that when the compliance tariffs were filed, the other parties would have 20 days to review the tariff and file objections. The Board further stated that if any objections were filed, the Board would order such additional proceedings as may be appropriate in the circumstances.

On August 6, 2001, Qwest filed its proposed retail compliance tariff. The proposed tariff included rates for the Qwest wire centers in Carter Lake, Canton-

Fairview (East), and Harrisburg-Tea (East), each of which represents an Iowa service territory that is served from a switch located in an adjoining state. Because the switches are out-of-state, they were not included in the Hatfield model that was used to deaverage Qwest's Iowa wholesale rates, but Qwest proposed to change the retail rates in these wire centers in order to preserve statewide uniformity. However, on August 21, 2001, Qwest filed corrected proposed tariff pages removing the three identified wire centers from the proposed tariff while the parties discussed the correct zone for each.

On August 27, 2001, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an objection to the proposed tariff.¹ Consumer Advocate objects that Qwest's compliance tariff violates two of the four criteria specified in the Board's January 11, 2001, order for the redesign of Qwest's retail business rates. Specifically, Consumer Advocate argues Qwest's proposed retail business rates are not revenue-neutral on a service-specific basis and the proposed rates for business flat rate services do not always equal or exceed the deaveraged UNE loop price in the same zone.

Also on August 27, 2001, Qwest filed a letter stating that a significant amount of programming work will be required to implement the proposed retail rate changes and the people who will have to do that programming are already committed to other

¹ Consumer Advocate's objection is timely, pursuant to the time computation provisions of Iowa Code § 4.1(34) (2001), because the twentieth day after the date the compliance tariff was filed was a Sunday, so the prescribed time was extended to include the following Monday.

projects, so Qwest will not be able to implement the new retail rates until some time in February 2002. Qwest requests an extension of the effective date of the proposed tariffs to coincide with a February 2002 accounting release. No specific date had been set for that release at the time Qwest filed its request.

On August 31, 2001, the Board granted Qwest's request for an extension of the effective date, subject to the requirement that Qwest must inform the Board as soon as the specific date is determined. Granting the request also allowed time for the parties to address, and the Board to consider, Consumer Advocate's objection and the appropriate treatment of retail rates in the Carter Lake, Canton-Fairview (East), and Harrisburg-Tea (East) wire centers.

On September 11, 2001, Qwest filed its response to Consumer Advocate's objection. On September 25, 2001, Consumer Advocate filed its reply to Qwest's response. No further comments have been filed.

On September 14, 2001, Qwest filed a status report stating it had reached agreement with the parties regarding rate treatment for the Carter Lake, Canton-Fairview, and Harrisburg-Tea exchanges. Qwest has not yet filed a specific proposed effective date for its compliance tariff.

There are four issues to be resolved with respect to this proposed tariff: (1) Whether the proposed rate changes are revenue neutral for each service; (2) which rate design criterion should take precedence, the 20 percent increase cap or the UNE loop pricing floor; (3) the appropriate retail rate treatment for the Carter Lake, Canton-Fairview, and Harrisburg-Tea wire centers; and (4) designation of a

tariff effective date. The Board will resolve the first three issues at this time, in order to facilitate Qwest's designation of a proposed effective date.

1. Revenue Neutral for Each Service

In its "Final Decision and Order" issued January 11, 2001, the Board described the second criterion for designing revised business retail rates as follows:

[E]ach basic business service or product using the loop should be deaveraged on a revenue-neutral basis for that particular service. In other words, it is not sufficient that business rates are redesigned so that the aggregate change is revenue neutral; **each service category should be independently revenue neutral.** Otherwise, the resulting changes would amount to redesign of the rate relationship between different services, which is not a type of change that is supported by UNE deaveraging as an exogenous factor. The only permissible change is geographic deaveraging of each affected service, on a **service-specific**, revenue-neutral basis.

(Order, pp. 31-32, emphasis added). Consumer Advocate argues that Qwest's proposed rates violate the Board's second-rate design criterion by not being revenue neutral, on a service-specific basis, for Flat Rate, Flat Rate PBX Trunk, and Centrex 21 Analog services.

Regarding Flat Rate service, Consumer Advocate argues that revenue from Flat Rate Main Line service will materially increase, while revenue from Flat Rate Additional Line service will materially decrease. Regarding Flat Rate PBX Trunk, Consumer Advocate argues that revenue from Flat Rate PBX Trunk service will materially increase, while revenue from Flat Rate PBX DID Trunk service will materially decrease. Regarding Centrex 21 Analog, Consumer Advocate argues that

revenues from Centrex 21 Analog "Month-to-Month" and "37-to-60-Month Rate Stabilization Plan (RSP)" services will materially increase, while revenue from Centrex 21 Analog "12-to-36-Month RSP" service will materially decrease.

Qwest responds that its rate changes comply with the Board's second rate design criterion and are revenue neutral for "each service category," as required by the Board's January 11, 2001, order. Qwest states its proposed business retail rate changes are revenue neutral for each of the following service categories: (1) Flat Rate; (2) Measured; (3) Stand-by Line; (4) PBX Flat Rate; (5) ISDN Basic Rate; (6) Centrex 21; and (7) Switchnet 56. Each set of revenue increases and decreases cited by Consumer Advocate occur within a single service category and cancel out (e.g., the Flat Rate Additional Line decrease cancels out the Flat Rate Main Line increase, making the changes to the Flat Rate service category as a whole revenue neutral). According to Qwest, Consumer Advocate erroneously describes different pricing plans for Centrex 21 (e.g., "month-to-month" versus "12-to-36-month RSP") as different services.

Consumer Advocate disagrees with Qwest's assertion that the revenue neutrality requirement applies to broader "service categories." Applying revenue neutrality to "service categories" rather than individual services would change the rate relationship between individual services, contrary to the Board's stated intent. Consumer Advocate recommends the Board order further proceedings to conform Qwest's proposed individual service rates to the revenue neutrality requirement.

This issue concerns the precise meaning of the Board's second-rate design criterion (quoted above). Consumer Advocate relies upon a narrow reading that considers every service variant individually listed in Qwest's tariff as a separate service. For example, Consumer Advocate identifies different pricing plans for Centrex 21 Analog as different services. Qwest uses a broader "service category" definition that considers all service offerings providing the same functional end-use as variants of the same service. For example, under Qwest's interpretation, variants of "Measured Service" include Business Measured, PBX Trunks Measured, PBX Toll Trunks Measured, Public Access Line (PAL) Measured, and Public Interexchange Carrier Access Line Measured.

Consumer Advocate also argues that Qwest's proposed business retail rates would produce "material" revenue increases for certain services. However, even under Consumer Advocate's interpretation, the revenue increases are relatively minor. The revenue increase cited by Consumer Advocate for Flat Rate Main Line service would be less than 0.6 percent and the increase for Flat Rate PBX Trunk service would be less than 0.3 percent. For Centrex 21, Consumer Advocate's view that different pricing plans constitute separate services seems implausible.² Thus, the revenue changes noted by Consumer Advocate do not appear to be material.

² Nonetheless, if defined this way, Centrex 21 revenues would increase 5 percent for the "month-to-month" pricing plan and increase 0.5% for the "37-60 month" plan. These increases would be more than offset by a 14 percent reduction for the "12-36 month" pricing plan.

Under Qwest's broader definition, in contrast, all service categories show minor net revenue reductions. The minor increases identified by Consumer Advocate are more than offset by the matching decreases, making the overall changes revenue neutral.

The Board concludes that, for purposes of the business rate redesign in this docket, Qwest's broader definition of service categories is consistent with the Board's Order of January 11, 2001. The Board ordered that business services should be deaveraged on a revenue-neutral basis within each service in order to prevent a "redesign of the rate relationship between different services." (Order, pages 31-32.) The Board then specifically stated, "each service category should be independently neutral." (*Id.*, emphasis added.) Clearly, the Board intended to look at service categories, not every individual service variation within each category, when applying the second criterion.

2. The 20 Percent Increase Cap vs. the UNE Loop Pricing Floor

In its "Final Decision and Order" issued January 11, 2001, the Board described its third criterion for designing business retail rates as follows:

[T]he rate increase to any particular customer should not exceed 20 percent. In Qwest's original proposal, the proposed increase for the vast majority of the services would have been no greater than 21 percent. The parties have litigated this case based upon that proposal and the Board will not change that limitation at this late stage of the proceeding.

(Order, p. 32, emphasis added.) The Board described its fourth rate design criterion as follows:

[T]he resulting rates for business services that include the loop should equal or exceed the deaveraged UNE loop price in the same zone. Thus, if the Zone 3 UNE loop price is \$32.37 per month, the rate for flat-rate business service in Zone 3 exchanges should be at least \$32.37 per month. This will reduce the incentive for pricing arbitrage for these business services.

(Order, p. 32, emphasis added.)

Consumer Advocate argues that Qwest's proposed Zone 3 business retail rates violate the Board's fourth rate design criterion by exceeding the Zone 3 UNE loop rate for Flat Rate Main Line and Additional Line services, Flat Rate Public Access Line (PAL) and Smart PAL Main Line services, and Flat Rate PAL and Smart PAL Additional Line services.³

Consumer Advocate notes that correcting the problem through an increase in business retail rates would violate the Board's third rate design criterion by increasing rates more than 20 percent for some individual customers. However, this could be avoided by reducing the Zone 3 UNE loop rate, instead. Consumer Advocate recommends the Board order further proceedings to resolve conflicts between the Board's third and fourth rate design criteria.

Qwest responds that it cannot increase Zone 3 business retail rates as proposed by Consumer Advocate without violating the Board's third rate design criterion that limits individual customer increases to 20 percent.

³ Specifically, the proposed Zone 3 retail rate for Flat Rate Main Line service, identified by Consumer Advocate, is \$32.76, or 60 cents less than the \$33.36 Zone 3 UNE loop rate. The proposed Zone 3 retail rate for Flat Rate Additional Line, PAL, and Smart PAL services, identified by Consumer Advocate, is \$31.82, or \$1.54 less than the \$33.36 Zone 3 UNE loop rate.

Initially, the issue appears to concern the interplay between the Board's third and fourth rate design criterion and which criterion should take precedence. However, the proper resolution of this issue is not one of choosing a winner between the third and fourth rate design criteria, but instead harmonizing the two in order to best achieve the goals at which each criterion is aimed. Conflicts in applying Board-ordered rate design criteria have occurred in the past. For example, regarding compliance rates in an IES Utilities electric case, the Board stated:

As is true with class cost-of-service studies, rate design is not an exact science. The Board's review is guided by what is reasonable under the circumstances rather than what is "correct" because there is not necessarily a "correct" design but only a "reasonable" one⁴

In other words, the Board will review the tariffs for "substantial compliance" with its orders, which are designed to promote reasonableness of rate design application, foster customer choice, and avoid severe anomalies or distortions.⁵

Thus, it is more appropriate to frame the issue as reasonable application of the Board's third and fourth rate design criteria, rather than which specific criterion takes precedence. In this case, Qwest has adhered to the third rate design criterion (the 20 percent rate increase cap) over the fourth criterion (the UNE loop pricing floor). This seems reasonable, especially given that parties most affected by the fourth criterion (i.e., the competitive local exchange carriers that participated in this docket: Goldfield Access Network, L.C. (Goldfield), McLeodUSA Telecommunications Services, Inc.

⁴ Re: IES Utilities, Docket No. RPU-94-2, "Order Granting Rehearing In Part And Denying Rehearing In Part," issued June 30, 1995, p. 8.

⁵ Ibid.

(McLeod), and Crystal Communications, Inc. (Crystal)), have filed no objection to Qwest's proposed rates. Also, the absolute amounts by which the Zone 3 UNE loop rates exceed the Zone 3 retail rates are not great.⁶ Therefore, Qwest's proposed rates substantially comply with the Board's third and fourth rate design criteria.

3. Appropriate Rate Treatment for Carter Lake, Canton-Fairview (East), and Harrisburg-Tea (East)

Qwest proposes to assign the three identified exchanges to Iowa business retail rate zones based on the out-of-state UNE deaveraging results for the wire centers that serve them. For example, Carter Lake is served by the same wire center as downtown Omaha, Nebraska. Therefore, Qwest proposes to assign Carter Lake to Iowa retail and UNE Zone 1, because Zone 1 most closely matches the Nebraska UNE deaveraging results for downtown Omaha. Similarly, Qwest states that the South Dakota UNE deaveraging results are closest to Zone 1 for the wire center serving Harrisburg-Tea (East), and closest to Zone 3 for Canton-Fairview (East). In its September 14, 2001, filing, Qwest reports that the parties either agree, or do not object, to Qwest's proposed rate treatment for the three wire centers.⁷

Qwest's proposed assignments resolve this issue in a reasonable manner.

The purpose of deaveraging retail rates is to reflect deaveraged UNE wholesale

⁶ Again, the proposed Zone 3 retail rate for Flat Rate Main Line service, identified by Consumer Advocate, is \$32.76, or 60 cents less than the \$33.36 Zone 3 UNE loop rate. The proposed Zone 3 retail rate for Flat Rate Additional Line, PAL, and Smart PAL services, identified by Consumer Advocate, is \$31.82, or \$1.54 less than the \$33.36 Zone 3 UNE loop rate.

⁷ Specifically, Qwest states that Goldfield agrees and Consumer Advocate, AT&T Communications of the Midwest, Inc., and McLeod do not object. Qwest's report does not mention Crystal, but the certificate of service attached to Qwest's report indicates that attorneys representing Crystal were served a copy of the report and no objection has been filed.

rates. These three exchanges are served by out-of-state wire centers that were not included in Iowa's UNE deaveraging. It is reasonable to match Iowa UNE rate zones to the corresponding out-of-state UNE deaveraging results, as closely as possible, and assign the exchanges on that basis.

4. Designation of a Tariff Effective Date

In its "Final Decision and Order" issued January 11, 2001, the Board ordered Qwest to specify an effective date for its proposed tariff by January 4, 2002. As a practical matter, the tariff cannot be approved and implemented until Qwest proposes a specific effective date. However, the Board's resolution of the preceding issues should minimize uncertainty and facilitate the work of Qwest's programming staff to establish an effective date.

Qwest's proposed business retail tariff changes will not be finally approved prior to Qwest's designation of a proposed effective date. To that end, the Board will direct Qwest to file, at the time it designates a proposed effective date, revised proposed tariff sheets reflecting the proposed effective date and Qwest's proposed assignment of the Carter Lake and Harrisburg-Tea (East) exchanges to Zone 1, and assignment of the Canton-Fairview (East) exchange to Zone 3.

IT IS THEREFORE ORDERED:

On or before January 4, 2002, Qwest Corporation shall file revised proposed tariff sheets reflecting the findings and conclusions of this order and showing a specific proposed effective date.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 16th day of November, 2001.